

use the simplified standards, it should support this request by submitting, at a minimum, the following information:

- (1) The carrier or region identifier.
- (2) The type of shipment (local, received-terminated, etc.).
- (3) The one-way distance of the shipment.
- (4) The type of car (by URCS code).
- (5) The number of cars.
- (6) The car ownership (private or railroad).
- (7) The commodity type (STCC code).
- (8) The weight of the shipment (in tons per car).
- (9) The type of movement (individual, multi-car, or unit train).
- (10) A narrative addressing whether there is any feasible transportation alternative for the challenged movements.
- (11) For matters for which voluntary, binding arbitration is available pursuant to 49 CFR part 1108, the complaint shall state that arbitration was considered, but rejected, as a means of resolving the dispute.

(b) *Disclosure with simplified standards complaint.* The complainant must provide to the defendant all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.

(c) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(d) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

(e) *Request for access to waybill data.* Parties needing access to the Waybill Sample to prepare their case should follow the procedures set forth at 49 CFR 1244.8.

[61 FR 52711, Oct. 8, 1996, as amended at 63 FR 2639, Jan. 16, 1998; 67 FR 36822, May 28, 2002; 72 FR 51375, Sept. 7, 2007]

§ 1111.2 Amended and supplemental complaints.

(a) *Generally.* An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5 of this part, as if the amended or supplemental complaint was an original complaint.

(b) *Simplified standards.* A complaint filed under the simplified standards may be amended once before the filing of opening evidence to opt for a different rate reasonableness methodology, among Three-Benchmark, Simplified-SAC or Full-SAC. If so amended, the procedural schedule begins again under the new methodology as set forth at §§ 1111.8 and 1111.9. However, only one mediation period per complaint shall be required.

[72 FR 51375, Sept. 7, 2007]

§ 1111.3 Service.

A complainant is responsible for serving formal complaints, amended or supplemental complaints, and cross complaints on the defendant(s). Service shall be made by sending a copy of such complaint to the chief legal officer of each defendant by either confirmed facsimile and first-class mail or express overnight courier. The cover page of each such facsimile and the front of each such first-class mail or overnight express courier envelope shall include the following legend: "Service of STB Complaint". Service of the complaint shall be deemed completed on the date on which the complaint is served by confirmed facsimile or, if service is made by express overnight courier, on the date such complaint is actually received by the defendant. When the complaint involves more than one defendant, service of the complaint shall be deemed completed on the date on which all defendants have been served. An original and ten copies of the complaint should be filed with the Board

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together with an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service. If complainant cannot serve the complaint, an original of each complaint accompanied by a sufficient number of copies to enable the Board to serve one upon each defendant and to retain 10 copies in addition to the original should be filed with the Board.

[61 FR 52711, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

§ 1111.4 Answers and cross complaints.

(a) *Generally.* An answer shall be filed within the time provided in paragraph (c) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition. In response to a complaint filed under the simplified standards, the answer must include the defendant's preliminary estimate of the variable cost of each challenged movement calculated using the unadjusted figures produced by the URCS Phase III program.

(b) *Disclosure with simplified standards answer.* The defendant must provide to the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III program.

(c) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Board may provide. The original and 10 copies of an answer must be filed with the Board. The defendant must serve copies of the answer upon the complainant and any other defendants.

(d) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief

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against them may be filed with the answer. An answer to a cross complaint shall be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

(e) *Failure to answer complaint.* Averments in a complaint are admitted when not denied in an answer to the complaint.

[72 FR 51376, Sept. 7, 2007]

§ 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

§ 1111.7 Investigations on the Board's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Board's own motion will be served by the Board upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.